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No.

In the Supreme Court of the United States

MARGARET SPELLINGS, SECRETARY OF EDUCATION,
PETITIONER

v.

DEE ELLA LEE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

PAUL D. CLEMENT
Acting Solicitor General
Counsel of Record

PETER D. KEISLER
Assistant Attorney General

THOMAS G. HUNGAR
Deputy Solicitor General

LISA S. BLATT
Assistant to the Solicitor General

BARBARA C. BIDDLE
LOWELL V. STURGILL
TARA L. GROVE
Attorneys

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

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QUESTION PRESENTED

Whether the Department of Education can collect defaulted student loans by offsetting a portion of a debtor's Social Security benefits without regard to the ten-year limitation period under the Debt Collection Act, 31 U.S.C. 3716(e)(1), given that Congress has expressly abrogated all otherwise applicable statutes of limitations for the collection of student loans.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The Acting Solicitor General, on behalf of the Secretary of Education, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-4a) is reported at 376 F.3d 1179. The opinion of the district court (App., *infra*, 5a-14a) is reported at 276 F. Supp. 2d 980.

JURISDICTION

The judgment of the court of appeals was entered on August 4, 2004. A petition for rehearing was denied on

October 29, 2004 (Pet. App. 15a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Title IV, Part E of the Higher Education Act of 1965 (HEA), 20 U.S.C. 1087aa *et seq.*, establishes the Federal Perkins Loan Program. Under the Perkins program, federal funds partially capitalize a loan fund established at a participating institution of higher education, which makes matching capital contributions to the fund. 20 U.S.C. 1087aa-1087cc; 34 C.F.R. 674.8. The institution may use the fund to issue loans to its students; the loans are repayable to the institution, which is responsible for servicing and collecting the loans. 20 U.S.C. 1087cc(a); 34 C.F.R. 674.16, 674.31-674.49.

Upon default by the student debtor, an institution may assign the Perkins loan to the Department of Education. 20 U.S.C. 1087cc(a)(4), 1087gg. 34 C.F.R. 674.50. The Department does not guarantee Perkins Loans, however, and makes no payment to the institution when it accepts an assignment of a defaulted Perkins loan or when it collects money from the borrower on the loan. 20 U.S.C. 1087(cc)(a)(4); 34 C.F.R. 674.8(d). Upon assignment of a Perkins loan, the Department of Education uses all available collection methods for collection on the loan. 20 U.S.C. 1087gg.

b. Various statutes provide for the effective and efficient collection of delinquent student loan debts. See, *e.g.*, 31 U.S.C. 3720A (tax refund offset); 5 U.S.C. 5514 (salary deduction for federal employees); 20 U.S.C. 1095a, 31 U.S.C. 3720D (salary garnishment for any employee); see also 11 U.S.C. 523(a)(8) (limiting student loan discharge in bankruptcy). One such statute is the Debt Collection Act, 31 U.S.C. 3701 *et seq.*, as amended by the Debt Collection Improvement Act, which estab-

lishes, *inter alia*, an administrative offset program. Under the administrative offset program, the Department of the Treasury withholds funds (such as income tax refunds) payable by the United States to an individual to satisfy a claim against that individual by a federal agency. 31 U.S.C. 3716(c), 3720A. The Debt Collection Act contains a limitation period, however, which provides that administrative offset is generally not available to collect "a claim * * * that has been outstanding for more than 10 years." 31 U.S.C. 3716(e)(1).

In 1991, Congress amended the HEA to abrogate all statutes of limitations that would otherwise be applicable to efforts to collect student loans. Congress achieved that result in 20 U.S.C. 1091a(a), which provides:

> Notwithstanding any other provision of statute, regulation, or administrative limitation, no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action initiated or taken * * * for the repayment of the amount due from a borrower on a loan made under [Title IV of the Higher Education Act.]

20 U.S.C. 1091a(a)(2)(D). Congress further expressed that "[i]t is the purpose of this subsection to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced." 20 U.S.C. 1091a(a)(1). Accordingly, the Secretary of Education has determined that it is no longer subject to the Debt Collection Act's ten-year limitations period in seeking repayment of delinquent student loans by

administrative offset. See 20 U.S.C. 1091a(a)(2)(D) ("no limitation shall terminate the period within which * * * an offset" can be taken by the Secretary "for the repayment" of student loans). The Department of the Treasury has concurred in that view. 67 Fed. Reg. 78,936 (2002) (observing that debts for "education loans" "may be collected by offset legally if more than ten years delinquent").

c. Section 207 of the Social Security Act, entitled Assignment of Benefits, exempts Social Security benefits from any "execution, levy, attachment, garnishment, or other legal processes" unless another statute "express[ly]" makes reference to Section 207. 42 U.S.C. 407(a) and (b). Before 1996, the Debt Collection Act did not expressly refer to Section 207 in authorizing administrative offset.

In 1996, Congress amended the Debt Collection Act explicitly to make Social Security benefits subject to administrative offset under the Debt Collection Act. See 31 U.S.C. 3716(c)(3)(A)(i) ("Notwithstanding any other provision of law (including section[] 207 * * * of the Social Security Act) * * * all payments due to an individual under the Social Security Act * * * shall be subject to offset under this section."). The Debt Collection Act further provides that the first $9000 of each debtor's annual Social Security benefits shall be exempt from administrative offset. 31 U.S.C. 3716(c)(3)(A)(ii). Implementing regulations of the Department of Treasury further limit the amount of offset of benefits to the lesser of (i) the amount of the debt, including any interest, penalties and administrative costs; (ii) an amount equal to 15 percent of the monthly covered benefit payment; or (iii) the amount, if any, by which the monthly covered benefit payment exceeds $750. 31 C.F.R. 285.4(e). The Department of

the Treasury, after making necessary modifications to its computer system, regulations, and administrative procedures, began implementing the administrative offset program for Social Security benefits in May 2001 with full implementation in 2002. Financial Management Service, U.S. Dep't of the Treasury, *Fact Sheet: Delinquent Debt Collection, Fiscal Year 2004, Major Accomplishments* (visited Feb. 24, 2005) <http://fms.treas.gov/news.factsheets.delinquent_debtcollection.html>.

2. In 1978, Penn Valley Community College issued to respondent two Perkins student loans, one for $1400 and the other for $2000. App., *infra*, 6a. In 1984, respondent defaulted on both loans. *Ibid.* In 1987 and 1989, the $1400 and $2000 loans, respectively, were assigned to the Department of Education. C.A. App. 26.

Since 1989, nine different collection agencies unsuccessfully attempted to collect on respondent's defaulted loans. App, *infra*, 7a. Respondent made no further payments on the loans. C.A. App. 27-28. The Department thus sent respondent "numerous collection letters" and repeatedly discussed her student loan obligations with her over the phone. *Ibid.* The Department also notified respondent that, if she did not repay the debt, the agency would initiate the administrative offset procedure under the Debt Collection Act. *Id.* at 30-31. The Department also informed respondent that she could "avoid offset by making satisfactory arrangements to repay the loan obligation" and by "voluntarily pay[ing] off [her] debt through affordable monthly payments based on" her financial circumstances. *Id.* at 26, 30.

In October 2001, the Department of the Treasury began withholding $33 per month from respondent's

Social Security payment. No. 02-00489-CV-W-NKL Decl. of Sheryl Davis, Attach. R (W.D. Mo.). After respondent began receiving additional Social Security benefits, the government correspondingly increased the offset, first to $53 per month on February 1, 2002, and later to $64 per month on March 3, 2003. *Ibid.* By March 2003, the United States had collected by Social Security offsets a total of $693. C.A. App. 26. At that time, the total outstanding debt on both loans, including interest and administrative fees, was $4633.35. App., *infra*, 6a.

3. In June 2002, respondent filed a complaint against the Secretary of Education in the United States District Court for the Western District of Missouri, seeking declaratory and injunctive relief preventing the Secretary from continuing to offset her Social Security benefits. C.A. App. 7, 14. Upon the parties' cross-motions for summary judgment, the district court entered judgment in favor of respondent. App., *infra*, 5a-14a. The district court held that, with respect to Social Security benefits, the limitation provision under the Debt Collection Act prevailed over the HEA provision that abolished limitations periods for student loans, reasoning that Section 407 of the Social Security Act provides that Social Security benefits are not subject to offset unless another law makes "express reference to this section." 42 U.S.C. 407(b). The court recognized that the Debt Collection Act was amended in 1996 to make Social Security benefits subject to offset, and that Congress expressly referenced Section 407(b) in so doing. App., *infra*, 10a-11a. The court nonetheless concluded that, "[w]hen Congress removed all statute of limitations obstacles in [Section] 1091a [in 1991], it could not have contemplated that its actions would have any effect on Social Security payments

because such payments were not yet subject to offset." *Id.* at 11a.

4. The court of appeals affirmed in a per curiam opinion, based on "the reasons given in the district court's well-reasoned opinion." App., *infra*, 4a. The court of appeals also stated that Congress's approval in 1996 "of offsetting social security benefits did not import [Section] 1091a into the social security context, because Congress expressly left the ten-year disabling provision [in 31 U.S.C. 3716(e)(1)] intact." *Id.* at 3a.

5. On July 23, 2004, twelve days before the court of appeals' decision in this case, the Ninth Circuit issued its decision in *Lockhart* v. *United States*, 376 F.3d 1027 (2004). *Lockhart* held that the ten-year limitation period set forth in 31 U.S.C. 3716(e)(1) has no application to the Secretary of Education's offset of Social Security benefits to satisfy student loan debts. The Ninth Circuit found it "clear that in 1996, Congress explicitly authorized the offset of Social Security benefits, and that in the Higher Education Act of 1991, Congress had overridden the 10-year statute of limitations as applied to student loans." 376 F.3d at 1030.

The government petitioned for rehearing in this case, citing the Ninth Circuit's recent decision in *Lockhart*, but the court of appeals denied rehearing. App., *infra*, 15a. Three judges, Chief Judge Loken, and Judges Colloton and Gruender, would have granted the petition for rehearing en banc. *Ibid.*

REASONS FOR GRANTING THE PETITION

This case presents the same question that is presented in *Lockhart* v. *United States*, No. 04-881, petition for a writ certiorari filed (Dec. 29, 2004). In that case, the government today has filed a brief urging the

Court either to grant the petition for a writ of certiorari in *Lockhart* or to hold that petition pending the disposition of the petition in this case. Both cases concern whether the Debt Collection Act's ten-year statute of limitations applies to the collection of delinquent federal student obligations by Social Security offset. That question is of substantial and recurring importance to the federal student loan collection program. In the instant case, the court of appeals held that the Secretary of Education is bound by a ten-year statute of limitations, a holding that is directly contrary to the decision of the Ninth Circuit in *Lockhart*.

As explained in the United States' response to the petition in *Lockhart* (at 16), the record in this case is fully developed, and both courts below held that the ten-year time limit under the Debt Collection Act had expired and therefore bars the administrative offset of respondent's Social Security benefits. App., *infra*, 4a, 14a. This case therefore may represent a more suitable vehicle than Lockhart for the Court to consider the issue. Alternatively, should the Court grant review in *Lockhart*, the petition in this case should be held pending the disposition in *Lockhart*.[1]

1. The court of appeals erroneously held that the Secretary of Education, in seeking repayment of delinquent federal student loans by offsetting Social Security payments, is bound by the ten- year limitation period specified in the Debt Collection Act, 31 U.S.C.

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[1] If this Court decides to grant certiorari in both cases and consolidate them for oral argument, it may wish to consider also consolidating the cases for briefing purposes and realigning the parties as appropriate to minimize the number of separate briefs that would have to be filed. As the defendant in both cases, the government has no objection to being made respondent in both cases.

3716(e)(1). The Higher Education Act expressly abrogates all time restrictions on the collection of student loans, including those otherwise applicable to collection by way of offset. Thus, the HEA provides that, "*[n]otwithstanding any other provision of [law], * * * no limitation shall terminate the period within which * * * an offset*" can be taken by the government "for the repayment of" educational loans. 20 U.S.C. 1091a(a)(2)(D) (emphasis added). The plain terms of the HEA therefore remove any time limitation for conducting administrative offsets with respect to federal student loan debt.

There is no basis for limiting the plain language of the HEA and distinguishing offsets of Social Security payments from other mechanisms, such as offsetting tax refunds or salary deductions from an employee's salary. The district court erroneously relied (App., *infra*, 10a-12a) on the fact that 42 U.S.C. 407 requires an express Congressional statement to make Social Security benefits subject to administrative offset. The Debt Collection Act contains such an express statement, 31 U.S.C. 3716(c)(3)(A)(i), and thus satisfies the requirement of Section 407. No additional statement to the same effect was required in the HEA, because the HEA addresses the applicable statutes of limitations for the use of offsets in the collecton of student loans, but it is not the provision that *authorizes* administrative offset. Only the authorization of offset is governed by an express cross-reference rule, and the relevant authorization is provided by the Debt Collection Act in 31 U.S.C. 3716, which, as stated, expressly makes clear that (notwithstanding 42 U.S.C. 407(a)) Social Security benefits are subject to offset to satisfy a claim by the federal government.

Nor is the sequence of the two enactments significant. The court of appeals emphasized (App., *infra*, 2a), that Congress abrogated all limitation periods under the HEA in 1991, while Social Security benefits were not subject to offset until Congress amended the Debt Collection Act in 1996. That sequence does not provide any basis for ignoring the plain text of the provisions. The HEA operates by its own terms regardless of the date of passage of an otherwise applicable statute of limitations. 20 U.S.C. 1091a(a)(2) ("*Notwithstanding any other provision of statute*, * * * no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset * * * initiated or taken."). In any event, when Congress in 1996 explicitly made Social Security benefits subject to offset, Congress was necessarily aware that the HEA already had rendered the Secretary exempt from the Debt Collection Act's ten-year limitation period. The Secretary of Education accordingly may conduct Social Security offsets to collect petitioner's delinquent student loans without regard to the time limit under the Debt Collection Act.

2. a. The courts of appeals are divided over the question whether the Debt Collection Act's ten-year statute of limitations applies to the collection of delinquent student loans by administrative offset of Social Security benefits. In contrast to the decision here, the Ninth Circuit held in *Lockhart* that the Secretary of Education, in seeking repayment of delinquent federal student loans, has the authority to conduct Social Security offsets without regard to the ten-year period specified in the Debt Collection Act, 31 U.S.C. 3716(e)(1). Unlike the Eighth Circuit in this case, the Ninth Circuit found it "clear that in 1996, Congress explicitly authorized the offset of Social Security

benefits, and that in the Higher Education Act of 1991, Congress had overridden the 10-year statute of limitations as applied to student loans." 376 F.3d at 1030.

This Court's review is warranted to resolve the direct circuit conflict, which prevents the uniform administration of a central part of the federal student loan program. See *Clay* v. *United States*, 537 U.S. 522, 526 (2003) (a writ of certiorari was granted "[t]o secure uniformity in the application of" the federal statute); *Brotherhood of Locomotive Eng'rs* v. *Atchison, Topeka & Santa Fe R.R.*, 516 U.S. 152, 156 (1996) (a writ of certiorari was granted "[b]ecause of the importance of uniform nationwide application of" the federal regulatory scheme). The federal government has a substantial interest in ensuring that student loan collection proceeds on a uniform basis nationwide. *Brannan* v. *United Student Aid Funds, Inc.*, 94 F.3d 1260, 1266 (9th Cir. 1996) (the "federal student loan program * * * requires uniformly administered collection standards in order to remain viable"), cert. denied, 521 U.S. 1111 (1997). Only by applying consistent rules throughout the country can the federal government endeavor to hold each delinquent debtor accountable for her federal obligations. *Id.* at 1264-1266; see also *In re Murphy*, 282 F.3d 868, 870 (5th Cir. 2002) (the application of a "uniform[]" rule to student loan obligations "prevent[s] recent graduates from reneging on manageable debts" and helps "preserve the solvency of the student loan system"); cf. *Hodges* v. *Thompson*, 311 F.3d 316, 319 (4th Cir. 2002) (noting, in another context, that federal standards can serve to prevent individuals from "avoid[ing] their [financial] obligations simply by moving across local or state lines") (internal quotation marks omitted), cert. denied, 540 U.S. 811 (2003).

b. The Court's review is also warranted because the view adopted by the Eighth Circuit undermines the government's student loan collection efforts. The purpose of the HEA's abrogation of limitation periods is "to ensure that obligations to repay loans * * * are enforced without regard to any Federal * * * statutory * * * limitation on the period within which debts may be enforced." 20 U.S.C. 1091a(a)(1). Subjecting Social Security offsets to a ten-year limitation period frustrates that purpose and significantly reduces the effectiveness of an important collection mechanism.

The offset process has proven to be an effective means of addressing the problem of student loan defaults. Thus, during the years 2000-2003, the Secretary of Education collected through the offset program approximately $400 million per year in delinquent student loan debt. Financial Management Service, U.S. Dep't of the Treasury, *Fiscal Year 2003 Report to Congress: U.S. Government Receivables and Debt Collection Activities of Federal Agencies* 19 (2004).

The Secretary's ability to offset Social Security benefits for delinquent loans that are more than ten years old is integral to the success of the offset program. Administrative offset in such circumstances typically occurs only because the student debtor has successfully evaded for many years (or even decades) all other efforts to collect the debt by the lender, the guaranty agency, and the Secretary of Education. Moreover, the vast majority of recipients of federal student loans receive such financial assistance under the HEA when they are young adults. Many such student loan debtors will not begin to receive Social Security benefits until they reach retirement age, which may occur many years after the Department of Education is entitled to collect on defaulted student

loan debts. For instance, the Department of Education advises us that, as of August 13, 2004, the Secretary had certified to the Department of the Treasury almost $7 billion in delinquent student loan debt, and that over half of that amount, *i.e.*, approximately $3.6 billion, reflected student loan debt over ten years old. For individuals having student loan debt who do not receive Social Security benefits until more than ten years after the Secretary is entitled to collect on the loans, the rule adopted by the Eighth Circuit would deprive the Secretary of the most efficient (and, in many instances, the only) means of collecting delinquent debt to the United States.

Application of a ten-year limitation period would also harm the agency's collection efforts with respect to individuals such as respondent, who begin receiving Social Security benefits, such as disability benefits, before retirement. App., *infra*, 7a. The Debt Collection Act and implementing regulations limit the amount of Social Security benefits that are subject to offset. 31 U.S.C. 3716(c)(3)(A)(ii); 31 C.F.R. 285.4(e). It therefore could take considerably more than ten years to collect many delinquent student loan obligations. A lengthy collection period is therefore necessary for the Secretary of Education to ensure maximum collection of delinquent student loans.[2]

Congress has expressly determined in the HEA that the Secretary of Education should have an unlimited

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[2] For individuals with a disability, the Department of Education's regulations permit administrative discharge upon a showing of total and permanent disability. 42 C.F.R. 682.402(c), 685.212(b), 674.61(b). The Department's records do not reflect that respondent sought to avail herself of those regulations to discharge his debt.

amount of time to enforce student loan obligations. 20 U.S.C. 1091a(a). This Court's review of the issue is necessary to ensure that Congress's intent is evenly administered throughout the country.

CONCLUSION

The petition for a writ of certiorari should be granted or, in the alternative, the petition should be held pending the Court's disposition of *Lockhart* v. *United States*, No. 04-881.

Respectfully submitted.

PAUL D. CLEMENT
Acting Solicitor General

PETER D. KEISLER
Assistant Attorney General

THOMAS G. HUNGAR
Deputy Solicitor General

LISA S. BLATT
Assistant to the Solicitor General

BARBARA C. BIDDLE
LOWELL V. STURGILL
TARA L. GROVE
Attorneys

FEBRUARY 2005

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 03-3819

DEE ELLA LEE, APPELLEE

v.

RODERICK PAIGE, SECRETARY OF THE DEPARTMENT OF EDUCATION, APPELLANT

[Filed: Aug. 4, 2004]

OPINION

Before: MORRIS SHEPPARD ARNOLD, MCMILLIAN, and MELLOY, Circuit Judges.

PER CURIAM.

Roderick Paige, Secretary of the United States Department of Education, appeals from a grant of summary judgment entered in favor of Dee Ella Lee, contending that the district court[3] incorrectly barred the department from garnishing Ms. Lee's social security benefits on account of her outstanding student loans. We affirm.

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[3] The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.

Ms. Lee defaulted on two student loans in 1984. The Department of Education took assignment of the loans in the late 1980's and has sought repayment ever since. In October, 2001, the government began withholding a portion of Ms. Lee's social security benefits, applying the amount to Ms. Lee's outstanding loan balance. She filed suit to stop the government from garnishing her benefits.

The dispute between Ms. Lee and Secretary Paige requires the synthesis of three separate acts: the Social Security Act, the Debt Collection Act (as amended by the Debt Collection Improvement Act), and the Higher Education Act.

The Higher Education Act, passed in 1991, eliminated statutes of limitations on the government's right to seek repayment on defaulted federal student loans, providing that "[n]ot withstanding any other provision of statute, . . . no limitation shall terminate the period within which suit may be filed, a judgment may be enforced, or an offset [or] garnishment . . . initiated or taken." 20 U.S.C. § 1091a(a)(2). At the time that the Higher Education Act became law, the Debt Collection Act authorized the government to offset unpaid debt balances from some federal payments but not from social security benefits. See 31 U.S.C. § 3716 (1988); 42 U.S.C. § 407 (1988). Congress later passed the Debt Collection Improvement Act, which authorizes federal agencies to recover money owed on delinquent student loans (as well as some other debts) by offsetting a debtor's social security benefits. See 31 U.S.C. § 3716(c)(3)(A)(i). The Debt Collection Improvement Act left unchanged, however, the original Debt Collection Act's limitation on the right of offset, under which government agencies are not allowed to use the remedy

of administrative offset on claims that have been outstanding in excess of ten years. See 31 U.S.C. § 3716(e)(1).

Though he concedes that the claims against Ms. Lee had been outstanding for more than ten years, Secretary Paige nonetheless argues that the ten-year limitation in the Debt Collection Act did not prohibit the administrative offset of Ms. Lee's benefits because that would be contrary to § 1091a(a)(2), which had eliminated statutes of limitations. Instead, he maintains that the ten-year disabling provision in § 3716(e)(1) should control all claims except those like the collection of student loans, where Congress eliminated all statutes of limitations. Ms. Lee argues that the disabling provision of § 3716(e)(1) was intentionally left in the statute and that it controls this case.

The district court agreed with Ms. Lee. See *Lee* v. *Paige*, 276 F. Supp. 2d 980 (W.D. Mo. 2003). The court reasoned that when "Congress removed all statute of limitations obstacles in § 1091a, it could not have contemplated that its actions would have any effect on Social Security payments, because such payments were not yet subject to offset," *id.* at 984, and subsequent Congressional approval of offsetting social security benefits did not import § 1091a into the social security context, because Congress expressly left the ten-year disabling provision intact. Had Congress intended to limit the disabling provision to allow the government unlimited offset opportunities for the collection of delinquent student loans, the district court reasoned, it would have done so explicitly. In the absence of Congressional language authorizing application of § 1091a to social security offsets, the district court concluded

that the specific limitations in § 3716(e)(1) prevail. *Id.* at 983-84.

We review *de novo* a district court's interpretation of a statute. *Loehrer* v. *McDonnell Douglas Corp.*, 98 F.3d 1056, 1061 (8th Cir. 1996). We affirm the judgment for the reasons given in the district court's well-reasoned opinion. The Department of Education remains free to pursue payment on the defaulted loans from Ms. Lee; it simply cannot take money from her monthly social security check to reduce the debt.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

No. 02-489-CV-W-GAF

DEE ELLA LEE, PLAINTIFF

v.

RODERICK PAIGE, SECRETARY OF THE UNITED STATES DEPARTMENT OF EDUCATION, DEFENDANT

July 25, 2003

ORDER

FENNER, District Judge.

Now before the Court are two cross motions for summary judgment. Plaintiff Dee Ella Lee ("Lee") filed a motion for partial summary judgment asking the Court to find that the Defendant, Roderick Paige, Secretary of the United States Department of Education, ("Education") has been improperly offsetting Lee's Social Security benefits in order to collect on two student loans that are both over twenty years old. In response, Education filed its own motion for summary judgment arguing that it had the power to offset Lee's Social Security benefits, that such offsets did not violate due process, that the retroactive abrogation of the statute of limitations regarding the collection of

Lee's debts did not violate due process, and that such offsets were not barred by the doctrine of laches.

DISCUSSION

I. Facts

There are very few facts underlying the present motions and they are, in large part, uncontroverted. In 1978, Lee took out two Perkins Loans to fund her studies at Penn Valley Community College. Perkins Loans are distributed from a fund capitalized by Education through contributions of Federal money that is distributed by secondary education institutions.

The first loan Lee obtained was in the amount of $1,400. Lee, who was 43 and on Social Security at the time, signed a promissory note vowing to repay the loan. In early 1981, Lee entered into a repayment plan for the loan, however she defaulted in 1984. Lee made no further voluntary payments on the loan and, in 2001, Education began offsetting Lee's Social Security payments in order to repay the loan. Education claimed it was authorized to offset Lee's benefit payments under the Treasury Offset Program. As of March 2003, the total amount owing on this loan, including interest and fees, was $1,938.80.

The second loan Lee obtained was drawn in the fall of 1978 in the amount of $2,000. This loan, like the prior loan, entered into repayment in 1981. In addition to defaulting on the payment of the previous loan, Lee also defaulted on repayment of this loan in 1984. Education offset Lee's Social Security payments to collect on this loan as well. The total amount owing on this loan, as of March 2003, was $2,694.55.

The offsetting of Lee's Social Security payments is the latest in a long history of collection attempts

undertaken by Education. Since 1989, nine different collection agencies have attempted to collect the overdue amounts from Lee. Lee previously received Social Security payments of $814 per month. After Education began offsetting her benefits, they were reduced to $750 per month. Lee has been unable to have the loans forgiven because she had a pre-existing disability when she obtained the loans.

Lee filed the current lawsuit alleging that the offset of her Social Security payments is not authorized by the administrative offset statute, 31 U.S.C. § 3716. She has since moved for partial summary judgment on the issue of whether Education is authorized to offset her Social Security benefits. Lee argues that § 3716, which allows government agencies to offset certain government payments, such as Social Security, does not allow offsets for claims that are over ten years old. Lee asserts, and it is apparently uncontested, that the claims of default on her two student loans are older than ten years. As such, argues Lee, Education is precluded from offsetting her Social Security payments under the plain terms of § 3716. In the alternative, Lee argues that the offsetting of her benefits, if statutorily permissive, violates the due process clause and the doctrine of laches. Assuming that Education cannot offset her Social Security payments, Lee argues that the retroactive elimination of the prior six-year statute of limitations by § 1091a violates due process.

Education contends that the offsetting of Lee's benefits is permissible despite the 10-year limitation in § 3716. It points to 20 U.S.C. § 1091a which states that no federal or state statutes of limitations or other regulations shall prevent Education from collecting on student loans. According to Education, this statute

removes all statutes of limitations obstacles which would otherwise prevent the collection of old loans. Education asserts that § 3716 cannot be read to impose a 10-year limitation on the offset of Social Security benefits for the purpose of paying student loans because such a restriction would overrule the unlimited grant of time contained in 20 U.S.C. § 1091a. Education proceeds to argue that the practice of offsetting Lee's benefits does not violate due process because the decision to offset was a reasonable determination by Education and because Lee had adequate notice and time in which to contest the offset. Furthermore, Education claims that laches does not apply because it has been trying to recover payment for the loans since 1989, hence there is no undue delay in its efforts.

II. Standard

Rule 56(c), Federal Rules of Civil Procedure, provides that summary judgment shall be rendered if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In ruling on a motion for summary judgment, it is the court's obligation to view the facts in the light most favorable to the adverse party and to allow the adverse party the benefit of all reasonable inferences to be drawn from the evidence. *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970); *Inland Oil and Transport Co.* v. *United States*, 600 F.2d 725, 727-28 (8th Cir. 1979).

If there is no genuine issue about any material fact, summary judgment is proper because it avoids needless and costly litigation and promotes judicial efficiency. *Roberts* v. *Browning*, 610 F.2d 528, 531 (8th Cir. 1979);

United States v. *Porter*, 581 F.2d 698, 703 (8th Cir. 1978). The summary judgment procedure is not a "disfavored procedural shortcut." Rather, it is "an integral part of the Federal Rules as a whole." *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); see also *City of Mt. Pleasant* v. *Associated Elec. Coop., Inc.*, 838 F.2d 268, 273 (8th Cir. 1988). Summary judgment is appropriate against a party who fails to make a showing sufficient to establish that there is a genuine issue for trial about an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 324, 106 S. Ct. 2548.

At the summary judgment stage the judge's function is not to weigh the credibility of the evidence, but rather to determine whether a genuine issue of material fact exists. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The evidence favoring the nonmoving party must be more than "merely colorable." *Id.*, 106 S. Ct. at 2511. When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show there is some metaphysical doubt as to the material facts. *Matsushita Elec. Indus. Co.* v. *Zenith Radio*, 475 U.S. 574, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986) (footnote omitted).

III. Analysis

The key issue in this controversy is whether Education is authorized to offset Lee's Social Security benefits in order to collect on claims more than ten years old. Resolution of that issue depends entirely on statutory

construction, a quintessentially legal matter. If this Court concludes that Education is not authorized to offset Lee's benefits, her claims of violation of due process and of the doctrine of laches are rendered moot.

After a review of the arguments presented by Lee and Education, and after an examination of the plain language of the respective statutes, the Court concludes that Education's argument regarding the applicability of § 1091a to offsets of Social Security benefits cannot be sustained. The Court is persuaded by the decision of *Guillermety* v. *Secretary of Education*, 241 F. Supp. 2d 727 (E.D. Mich. 2002). This opinion is highly persuasive, despite its foreign jurisdiction status, because it is factually similar to the present case and because it confronts arguments identical to those made by Education in the current motion. The Court adopts the reasoning of the *Guillermety* decision and highlights a few key points.

Congress has provided that Social Security benefits cannot be offset unless § 407(b) of the Social Security Act is specifically referenced in the offset authorizing statute. See 42 U.S.C. § 407(b). In 1991, Congress eliminated all statutes of limitations on the collection of student loans but, in so doing, did not explicitly reference § 407(b) of the Social Security Act. See 20 U.S.C. § 1091a. The effect of this law was to abrogate all statutes of limitations that would have barred the collection of past due student loans. This abrogation was even applied retroactively. See *U.S.* v. *Phillips*, 20 F.3d 1005 (9th Cir. 1994). At the time Congress passed § 1091a, governmental agencies were not allowed to offset or garnish Social Security benefits. In 1996, Congress permitted the offsetting of Social Security benefits in order to collect on debts, including student loan

debts, specifically referencing § 407(b). See 31 U.S.C. § 3716(c)(3)(A)(i). However, Congress also stated that the administrative offset provision, allowing government to offset Social Security payments, did not apply to claims older than ten years. 31 U.S.C. § 3716(e)(1).

Education argues, as it did in *Guillermety*, that the ten-year restriction cannot apply to Education's offsets because to conclude otherwise would overrule § 1091a, which Congress did not intend to do. See Def. Opp. at 25. Rather, asserts Education, the proper harmonization of these two statutes is to find that the ten-year limitation in § 3716(e)(1) is negated by Congress' clear intention to allow unlimited time to collect student loans as evidenced in § 1091a. As was recognized by the court in *Guillermety*, such a position is untenable.

The major flaw in Education's argument stems from the chronology of the enactment of the statutes involved. Congress enacted § 1091a prior to enacting § 3716. When Congress removed all statute of limitations obstacles in § 1091a, it could not have contemplated that its actions would have any effect on Social Security payments because such payments were not yet subject to offset. Congress did not allow for Social Security payments to be reduced to pay outstanding debts until 1996, when it passed § 3716. It does not follow that an earlier general provision, § 1091a, overrides a later, more specific provision, § 3716. See *Guillermety*, 241 F. Supp. 2d at 753. This is especially true in light of the fact that Congress could have, but did not make an exception in § 3716(e)(1) for student loans.

A better reading of § 3716 and § 1091a would be the following: Congress declared in 1091a that there would no limitations on when student loans could be collected.

This statute controls the time for collecting past due amounts. In § 3716, Congress allowed for Education to reach various sources as a means of offsetting past due claims, but provided that Social Security benefits could not be offset for claims over ten years old. This statute controls the sources of funds to which Education can look to satisfy its claim. Section 3716 does not limit Education's time in which to collect student loans, rather it limits Education's ability to look to Social Security benefits for repayment. In short, Education is still entitled to pursue it's the collection of Lee's student loans. It may not however, look to Lee's Social Security benefits to collect.[4] Due to the age of its claims against Lee, Education is not authorized, in this case, to satisfy its claim by offsetting Lee's Social Security benefits.[5]

Which brings to the fore, Lee's claim that the retroactive application of § 1091a to her situation violates due process. Lee concedes that the retroactive application of statute of limitations changes does not, per se, violate due process. See Pl. Reply at 7 (citing *Chase*

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[4] As the court in *Guillermety* noted, the reason for this derives from the nature of Social Security benefits. "Social Security benefits . . . are designed to provide recipients with funds to meet their most basic needs, e.g., food, shelter, medicine." *Guillermety*, 241 F. Supp. 2d at 754 n.25. Further evidence of the unique nature of Social Security payments is found in the fact that Congress has imposed limitations upon itself with regard to the offset of such benefits stating that attachment will only be authorized by express, statutory reference to § 407(b) of the Social Security Act. See *Id.*

[5] Because the Court finds that Education may not offset Lee's Social Security benefits in order to collect on her overdue loans, the Court does not consider her claims that such offsets violated due process or the doctrine of laches.

Sec. Corp. v. *Donaldson*, 325 U.S. 304, 65 S. Ct. 1137, 89 L. Ed. 1628 (1945)). Lee instead argues that abrogating the six-year statute of limitations on contract claims would work a "special hardship" upon Lee, or would have an "oppressive effect." See Pl. Reply at 7. Lee claims that the "extreme delay" on the part of Education in pursuing repayment of the loans has caused her to lose memory and paperwork relating to the loans. However, Lee does not dispute that she took out the loans. She does not dispute that she owes money on the loans. She does not dispute that Education, in order to collect on the loan, has utilized nine different collection agencies over the course of twelve years. She also admits that she has received repeated calls and letters inquiring about her failure to pay on the loans. These facts present the clear impression that, if there has been any extreme delay, it has been Lee's delay in paying her undisputed obligations. The Court is sympathetic to the fact that Lee has limited income from her Social Security benefits. However, Lee does not cite to any case law which holds that the loss of paperwork, memory, or even the inability to pay a debt constitutes a "special hardship" for purposes of retroactively abrogating a statute of limitations. In the present case, Lee's hardship stems from the fact that she has limited income, not from the fact that Education is able to pursue collection without regard to statutes of limitations. For these reasons, Lee's claim that the retroactive application of § 1091a violates due process is infirm.

CONCLUSION

For the above reasons, Plaintiff Dee Ella Lee's Motion for Partial Summary Judgment is GRANTED. Defendant Roderick Paige, Secretary of the Depart-

ment of Education's Motion for Summary Judgment is GRANTED IN PART, and DENIED IN PART. Accordingly, it is ORDERED as follows:

1) Defendant has no authority, under 31 U.S.C. § 3716 to offset Plaintiff's Social Security payments in order to satisfy outstanding student loan debts, because Education's claims are more than ten years old.

2) Defendant is hereby enjoined from any future offsets of Plaintiff's Social Security benefits.

3) Such ruling does not preclude the ability of Defendant to continue to look to Plaintiff for payment of her debts.

4) Retroactive application of 20 U.S.C. § 1091a does not violate Plaintiff's due process rights under the Fourteenth Amendment to the United States Constitution.

IT IS SO ORDERED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 03-3819

DEE ELLA LEE, APPELLEE

v.

RODERICK PAIGE, SECRETARY OF THE DEPARTMENT OF EDUCATION, APPELLANT

Oct. 29, 2004

ORDER DENYING PETITION FOR REHEARING AND FOR REHEARING EN BANC

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Chief Judge LOKEN, Judge COLLOTON and Judge GRUENDER would grant the petition for rehearing en banc.

Order Entered at the Direction of the Court:

/s/ MICHAEL E. GANS
MICHAEL E. GANS

Clerk, U.S. Court of Appeals, Eighth Circuit